

Introduced by Senator Wyland

February 26, 2009

An act to amend Section 298 of, and to amend the heading of Article 4 (commencing with Section 298) of Chapter 6 of Title 9 of Part 1 of, the Penal Code, relating to forensic data.

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as introduced, Wyland. Forensic data: DNA.

Existing law, the DNA and Forensic Identification Database and Data Bank Act, as amended by Proposition 69 of the November 2, 2004, statewide general election, which permits legislative amendment for specified purposes, including expeditious crime solving and exoneration, provides that the Department of Justice, through its DNA Laboratory, is responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program. The act imposes certain requirements on local law enforcement agencies that collect specimens or samples pursuant to these provisions, including that the specimens or samples collected be forwarded immediately to the department and in compliance with department policies.

This bill would require that all DNA samples or specimens collected in criminal investigations be processed and analyzed for identification purposes within 30 days of collection.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The heading of Article 4 (commencing with Section 298) of Chapter 6 of Title 9 of Part 1 of the Penal Code is amended to read:

Article 4. Collection, ~~and~~ Forwarding, *and Analysis* of Samples

SEC. 2. Section 298 of the Penal Code is amended to read:

298. (a) The Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, buccal swab collectors, mailing tubes, labels, and instructions for the collection of the blood specimens, buccal swab samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers. *All DNA samples or specimens collected in criminal investigations shall be processed and analyzed for identification purposes within 30 days of collection.*

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

1 (4) Right thumbprints and a full palm print impression of each
2 hand shall be taken on forms prescribed by the Department of
3 Justice. The palm print forms shall be forwarded to and maintained
4 by the Bureau of Criminal Identification and Information of the
5 Department of Justice. Right thumbprints also shall be taken at
6 the time of the collection of samples and specimens and shall be
7 placed on the sample and specimen containers and forms as
8 directed by the Department of Justice. The samples, specimens,
9 and forms shall be forwarded to and maintained by the DNA
10 Laboratory of the Department of Justice.

11 (5) The law enforcement or custodial agency collecting
12 specimens, samples, or print impressions is responsible for
13 confirming that the person qualifies for entry into the Department
14 of Justice DNA Database and Data Bank Program prior to
15 collecting the specimens, samples, or print impressions pursuant
16 to this chapter.

17 (6) The DNA Laboratory of the Department of Justice is
18 responsible for establishing procedures for entering data bank and
19 database information.

20 (c) (1) Persons authorized to draw blood or obtain samples or
21 print impressions under this chapter for the data bank or database
22 shall not be civilly or criminally liable either for withdrawing blood
23 when done in accordance with medically accepted procedures, or
24 for obtaining buccal swab samples by scraping inner cheek cells
25 of the mouth, or thumb or palm print impressions when performed
26 in accordance with standard professional practices.

27 (2) There is no civil or criminal cause of action against any law
28 enforcement agency or the Department of Justice, or any employee
29 thereof, for a mistake in confirming a person's or sample's
30 qualifying status for inclusion within the database or data bank or
31 in placing an entry in a data bank or a database.

32 (3) The failure of the Department of Justice or local law
33 enforcement to comply with Article 4 or any other provision of
34 this chapter shall not invalidate an arrest, plea, conviction, or
35 disposition.